

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALAN F.

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2006050310

DECISION

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on June 20, 2006, in Oakland, California.

Claimant Alan F. was represented by his father and mother.

Pamela Higgins, Fair Hearing Specialist, represented service agency Regional Center of the East Bay (RCEB).

The record closed on June 20, 2006.

ISSUE

Whether RCEB is required to reimburse Claimant's parents for the cost of attendance at a Relationship Development Intervention workshop.

FACTUAL FINDINGS

BACKGROUND

1. Claimant was born on October 7, 2000, and is currently five years old. He has been diagnosed with autism and is an RCEB consumer. Claimant lives at home with his parents. During the 2005/2006 school year Claimant was enrolled in a "special day class" at

Alvarado Elementary School in the New Haven School District pursuant to his Individual Education Plan (IEP). In addition, he receives services through RCEB designed to aid in his overall development as provided for in his Individual Program Plan (IPP).

2. Claimant's parents are very concerned about Claimant's deficits, including his ability to relate emotionally to others. In at least early 2006 they became aware of a therapeutic methodology called Relationship Development Intervention (RDI). His parents read extensively about RDI and began applying what they had learned when they interacted with Claimant. They were very pleased with the results, and generally believe that "RDI does what it claims to do." For example, on one occasion when Claimant's mother was upset and crying, Claimant stared intently at her face and appeared to be reading her expression. This was something that they had not seen before.

Consequently, Claimant's parents were interested in attending an RDI workshop for parents that was scheduled for June 9 and 10, 2006. The cost for them both to attend was \$500. On or about April 3, 2006, they requested that RCEB pay for the workshop.

3. On April 26, 2006, RCEB issued a notice of proposed action denying Claimant's parent's request. As reason for the denial, the notice quotes from the Lanterman Act provisions preventing regional centers from supplanting the budgets of generic agencies (Welf. & Inst. Code § 4648, subd. (a)(8)) and requiring regional centers to only make cost-effective purchases proposed by IPP participants (Welf. & Inst. Code § 4512, subd. (b)).

Claimant's father filed a request for fair hearing dated May 1, 2006. In the section entitled reason for the request he wrote: "To receive funding from Regional Center of the East Bay for a parent driven training program called RDI (Relationship Development Intervention). This program assists parents in helping their children learn the keys to normal social interactions and relationships with family, friends and peers." In response to the request for a description of what would be needed to resolve his complaint, he wrote: "Full funding for books, materials, workshop costs for two parents, and fees charged by RDI consultant."

4. Claimant's parents did not wait for the appeal process to conclude. They paid for and attended the workshop on June 9 and 10, 2006. At hearing, they identified the issue in dispute as reimbursement for the \$500 they spent to attend.

THE RDI PROGRAM

5. RDI was developed by Steven E. Gutstein, Ph.D., a licensed clinical psychologist. The purpose of the program is to address the social-emotional limitations experienced by autistic individuals. The program is marketed through Connections Center, which also produces workshops for parents. Parental training and participation is an essential component of RDI.

6. In 2003, Dr. Gutstein issued a report entitled: “The effectiveness of Relationship Development Intervention to remediate Experience-Sharing deficits of autism-spectrum children.” Dr. Gutstein wrote that “The study provides an encouraging, early validation of the ability of RDI, a targeted, systematic, parent-focused, developmentally-based intervention, to impact the development of Inter-subjective Engagement, a core social deficit of autism.”

In the report, Dr. Gutstein describes the limitations of his findings. For example, he references “the retrospective nature of the study, precluding random assignment or matching procedures, [which open] up the possibility of a self selection bias.” And he states “Clearly the dramatic findings. . . call for replication studies with larger sample sizes, continued longitudinal follow up and multi-site RDI providers.”

Claimant’s father testified that he understands that Dr. Gutstein’s report has been accepted for publication in a respected professional journal; however, no proof of publication was submitted.

7. Connections Center maintains a website that contains a great deal of information about RDI and Dr. Gutstein, including many stories and testimonials from parents regarding the difference RDI has made in the lives of their children. It also contains favorable comments from professionals.

8. Weihe Huang, Ph.D., is a board-certified behavior analyst. He has worked for RCEB for nine years, coordinating behavioral services and providing training to service providers. Dr. Huang is familiar with the different behavioral models and the common intervention therapies employed to assist the autistic. Dr. Huang is familiar with RDI. He attended an introductory training, read a book authored by Dr. Gutstein, watched a DVD about the RDI steps and has discussed it with colleagues. Dr. Huang believes that some of the components employed by the method “might be useful – like training parents and getting them involved in the process. I think parent involvement is one of the most important predictors of how children with autism progress. Autistics have rigid thinking, so introducing different methods makes sense.” Dr. Huang opined, however, that RDI is still an experimental therapy because there is inadequate data to support its effectiveness.

9. One of RCEB’s obligations is to ensure that the services it supports are credible and deserving of the expenditure of public funds. Accordingly, RCEB has in place a Purchase of Services Policy (current version dated 1/14/04) concerning the provision of different therapies. In pertinent part, it states:

Services that are described as therapeutic but are experimental in nature and have no proven outcomes are not included in this Policy.

Generally speaking, professional treatments and interventions are considered experimental until they are proven by professional scientific research and the research has been published in independent, peer-reviewed journals.

10. RCEB contends that, based upon the lack of independent scientific research supporting RDI's claims, RDI is an experimental program at this time; hence, RCEB does not provide RDI services to its consumers.

APPLICABLE LAW

1. Funding special training for parents is one of the services provided developmentally disabled consumers pursuant to the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code § 4501 et seq.) The purpose of the Act:

. . . is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community. *Association for Retarded Citizens v. The Department of Developmental Services* (1985) 38 Cal.3d 384, 388.

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. However, the Act directs the Department, in turn, to provide the services through agencies located in the communities where the clients reside. Specifically:

. . . the state shall contract with appropriate agencies to provide fixed points of contact in the community. . . . Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers. (Welf. & Inst. Code § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may. . . purchase service. . . from an individual or agency which the regional center and consumer. . . or parents. . . determines will best accomplish all or any part of that [IPP] (Welf. & Inst. Code § 4648, subd. (a)(3).)

4. There is no doubt that regional centers must respect the choices made by parents (Welf. & Inst. Code § 4502.1) and that services which will improve parent skills are included in the services to be provided by regional centers (Welf. & Inst. Code § 4511, subd. (c)). The law is also clear, however, that the IPP process is a team process – unilateral decisions regarding services and supports cannot be made. And there exist definite restrictions on expenditures. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible.” (Welf. & Inst. Code § 4640.7, subd. (b)). Perhaps most relevant in this matter, however, is the following statement of legislative intent:

The Legislature finds that the mere existence or delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. (Welf. & Inst. Code § 4501.)

DISCUSSION

The evidence supported RCEB’s contention that RDI, an interesting new therapy for autistic children, is currently without independent scientific support. At this time, there is no reason to believe its methods are effective other than that Dr. Gutstein and some parents say they are – in other words, the evidence is anecdotal. Consequently, insufficient evidence supports Claimant’s appeal to overturn SARC’s decision not to fund the RDI workshop attended by his parents. In the future it may be possible to demonstrate that the program represents a wonderful breakthrough. Or, more modestly, it may be proven helpful to parents. When public funds are expended, however, applying an objective standard is necessary. RCEB’s conclusion that RDI does not meet the standard is persuasive. Therefore, it is determined that RDI is properly categorized as an experimental program that does not justify the expenditure of public funds under the Lanterman Act at this time.

ORDER

Claimant Alan F.’s appeal is denied and RCEB’s denial of reimbursement is sustained. RCEB is not required to reimburse Claimant’s parents for the cost of attendance at the Relationship Development Intervention (RDI) workshop on June 9 and 10, 2006.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.